HUNDRED AND SIXTY-THIRD REPORT

PUBLIC ACCOUNTS COMMITTEE (1983-84)

(SEVENTH LOK SABHA)

UNION EXCISE DUTIES—KNOCKED DOWN CONDITION

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE)

[Action Taken by Government on the recommendations of the Public Accounts Committee contained in their 108th Report (Seventh Lok Sabha)]

Presented in Lok Sabha on————————
Laid in Rajya Sabha on————————

LOK SABHA SECRETARIAT
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(1983-84)

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INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Sixty-third Report on action taken by the Government on the recommendations of the Public Accounts Committee contained in their hundred and Eighth Report (Seventh Lok Sabha) on Union Excise Duties—Knocked down condition.

2. In their 108th Report the Committee had dealt with certain cases of short levy of excise duty on goods cleared in knocked down condition to be manufactured/assembled at site and over a period of time against a particular contract. The Committee had recommended that the Ministry of Finance should seek the opinion of the Ministry of Law and review the cases in the light of their observations. In this Report the Committee have taken note of the Ministry of Law's disagreement with the Ministry of Finance on the interpretation of the expression "plant and machinery" as "not movable" and hence "not goods" in terms of the Sale of Goods Act. The Ministry of Law have advised the Ministry of Finance that they may decide each case on its merits. The Committee have reiterated their earlier recommendation that the Ministry of Finance should review the cases and also inform them of the position of chargeability/realisation of duty on the basis of the opinion given by the Ministry of Law.

3. On 12 May, 1983 the following Action Taken Sub-Committee was appointed to scrutinise the replies received from Government in pursuance of the recommendations made by the Public Accounts Committee in their earlier Reports:

1. Shri Sunil Maitra—*Chairman*

MEMBERS

2. Shri K. Lakkappa
3. Shri G. L. Dogra
4. Shri Ram Singh Yadav
5. Shri Bhiku Ram Jain
6. Shri Nirmal Chatterjee

4. The Action Taken Sub-Committee of the Public Accounts Committee 1983-84 considered and adopted the Report at their sitting held on 14 June, 1983. The Report was finally adopted by the Public Accounts Committee on 20 July, 1983.

5. For reference facility and convenience, the recommendations and observations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form in the Appendix to the Report.

6. The Committee place on record their appreciation of the assistance rendered to them in this matter by the Office of the Comptroller and Auditor General of India.

SUNIL MAITRA
Chairman,

NEW DELHI;
23 *July*, 1983

1 *Sravana*, 1905 (*S*)

CHAPTER I

REPORT

1.1 This Report of the Committee deals with the action taken by Government on the Committee's recommendations and observations contained in their Hundred and Eighth Report (Seventh Lok Sabha) on Paragraph 2.51 of the Report of the Comptroller and Auditor General of India for the year 1979-80, Union Government (Civil) Revenue Receipts, Volume I, Indirect Taxes relating to Union Excise Duties—knocked down condition.

1.2 The Hundred and Eighth Report, which was presented to Lok Sabha on 29 April, 1982, contained 11 recommendations Action Taken notes in respect of all the recommendations/observations have been received from Government. These have been categorised as follows:—

(i) Recommendations and observations that have been accepted by Government:

S. Nos. 1, 2, 9, 10 and 11

(ii) Recommendations and observations which the Committee do not desire to pursue in the light of the replies received from Government:

Nil

(iii) Recommendations and observations replies to which have not been accepted by the Committee and require reiteration:

S. Nos. 3, 4, 5, 6 and 7

(iv) Recommendations and observations in respect of which Government have furnished interim replies:

S. No. 8

1.3 The Committee desire that final action taken reply to the recommendation at S. No. 8 in respect of which only interim reply has been furnished so far should be submitted expeditiously after getting it vetted by Audit.

1.4 The Committee will now deal with action taken by Government on some of their recommendations.

Issue of instructions without proper scrutiny
(S. No. 3 to 7—Paras 1.57 to 1.61)

1.5 According to the instructions issued by the Central Board of Excise and Customs in September, 1977 when goods are cleared in knocked down condition to be assembled at site and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes. In their 108th Report (Seventh Lok Sabha) the Committee had dealt with certain cases of short levy of excise duty pointed out by Audit amounting to Rs. 24.77 lakhs on goods covered under item 68 of Central Excise Tariff in terms of the instructions issued by the Central Board of Excise and Customs in September 1977. During examination, the Ministry of Finance had maintained that no irregularities had taken place in those assessments in terms of the revised instructions issued by the Central Board of Excise and Customs on 25 February, 1981. Commenting on the implications of the instructions issued on 25 February, 1981, the Committee in paragraphs 1.59 and 1.61 of the Report had observed:—

> "The Committee find that the Central Board of Excise and Customs issued fresh guidelines on 25 February 1981 on classification of plant and machinery assembled at site under tariff item 68 after the matter was discussed at Zonal Tariff Conferences held in September, October and December, 1980. In the said instructions, the Board held the view that each of the individual items of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production, unless specifically exempt. Further liability of duty on the completed articles produced by assembling these parts alongwith bought out items, if any, will arise only when such assembly involve "manufacture" and the site at which assembly takes place is a 'factory' premises. In the case of plant and machinery, it is first to be examined if these plants and machinery are goods manufactured in a 'factory', that is, they are bought and sold after 'manufacture' in that factory and in case the plants and machinery assembled and installed at site as a total entity is not capable of being sold as goods, no further duty is payable. According to the Ministry in the cases involved in the Audit

Paragraph goods were cleared in parts at the rates prevalent on the date of the actual removal and, therefore, no irregularity had taken place.

The Committee note that in the instructions issued on 25 February, 1981, the Central Board of Excise and Customs had referred to the definition of 'goods' given in the Sale of Goods Act, 1930 for the purpose of making assessments of plant and machinery manufactured/assembled at site. The term "goods" had not been defined in the Central Excises and Salt, Act, 1944 and only the term "excisable goods" has been defined in Section 2(d) of the Act. It is pertinent to point out that the Central Excises and Salt Act, 1944 does not stipulate sale of goods for the purpose of levy of duty, the duty being levied on manufacture and not on their sale. According to the Ministry of Finance, "in the absence of a definition in the parent Act it was considered prudent to rely on another enactment of the Parliament to take help or assistance in streamlining the procedure." In the cases mentioned in the Audit Para, the Ministry of Finance, in their latest replies, have gone only by the fact that the machines supplied were affixed to the ground. This fact by itself, is not enough to take the machines out of the definition of movables. The Transfer of Property Act defines the phrase 'attached to the earth' to mean, rooted in the earth as in the case of trees or shrubs, embedded in the earth as in the case of walls or buildings, or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached. In order to determine what is or what is not immovable as a result of attachment or annexation to land two tests have been laid down, viz. (i) the degree or mode of annexation, and (ii) the object of annexation. (Commissioner of Income Tax Vs. Bhurangiya Coal Co.—AIR 1953 Pat. 298) what has to be seen is whether the annexation is with the object of permanent beneficial enjoyment of the land or building; machinery attached by bolts to special concrete base so that it could not be easily moved was held not to be part of the structure housing it, or the soil beneath it as the machinery was not attached for the permanent beneficial enjoyment of either the soil or the concrete. (Jnan Chand Vs. Jugal Kishore—1960 Act. 331—See Mulla on Transfer of Property, 6th ed., p. 27). Regard must also

be had to the title of the person fixing it and the object of the transaction by which it is transferred or fixed. (Subramanian Firm Vs. Chidhambram—AIR, 1940. Mad-527). The cases have, therefore, to be examined from all these angles. In reply to a pointed question of the Committee, the Ministry however, admitted that "the opinion of the Law Ministry was not obtained before the issue of the instructions dated 25-2-1981". The Committee recommend that the Ministry of Finance should now seek the opinion of the Ministry of Law on the issue and review these cases accordingly under intimation to the Committee."

1.6 In a common action taken note on the recommendations/ observations of the Committee contained in paragraphs 1.57 to 1.61, furnished on 14 March, 1983, the Ministry of Finance (Department of Revenue) have stated:—

"The above mentioned five paragraphs recapitulate the facts of the cases covered by Audit Para 2.51, the questions raised and the answers given with regard to those cases and containing at the end, the recommendation that the opinion of the Law Ministry should be taken on the issue involved. This has been done. The opinion received from the Law Ministry has been circulated to the field formations with Boards letter of 14-10-1982 copy of which is enclosed."

1.7 A copy of the advice of the Ministry of Law referred to above is shown as Annexure. While giving their advice, the Ministry of Law have disagreed with the Ministry of Finance on the interpretation of 'plant and machinery' as 'not movable' in terms of the definition of 'goods' under the Sale of Goods Act, 1930, as sought to be clarified by the Central Board of Excise and Customs in their instructions issued on 25 February, 1981. The Ministry of Law have *inter alia* stated that it cannot be laid as absolute rule that whatever is affixed to the ground automatically becomes immovable property. In order to determine what is and what is not immovable property certain tests have been specified in the relevant Law. The Ministry of Law have advised the Ministry of Finance that they may decide each case on its merits.

1.8 In their 108th Report, the Committee had examined certain cases of short levy of excise duty amounting to Rs. 24.77 lakhs under

item 68 of the Central Excise Tariff and in terms of the instructions issued by the Central Board of Excise and Customs in September, 1977 on goods cleared in knocked down condition to be manufactured assembled at site and over a period of time against a particular contract. The Ministry of Finance had maintained that no irregularity had taken place in those cases in the light of the fresh instructions issued by the Central Board of Excise and Customs on 25 February, 1981. While pointing out certain anomalies in the instructions issued on 25 February 1981, the Committee had observed that the Board had not examined the matter from all legal angles. For example, in the said instructions, the Board had inter alia maintained that in case plant and machinery assembled and installed at site as a total entity was not capable of being sold as goods, no further duty was payable. The Board had further drawn the conclusion that in the type of cases under review, plant and machinery may not merit to be called goods as they are not movable in terms of the definition of 'goods' under the Sale of Goods Act 1930. While observing that this interpretation of the Board was without the support of any legal opinion given by the Ministry of Law, the Committee had recommended that the Ministry of Finance should now seek the opinion of Ministry of Law and review the cases of irregularities pointed out by Audit.

1.9 In pursuance of the recommendation of the Committee, the Ministry of Finance sought the opinion of the Ministry of Law. From the opinion given by the Ministry of Law it is seen that they have disagreed with the Ministry of Finance on the interpretation of plant and machinery as 'not movable' in terms of the definition of 'goods' under the Sale of Goods Act, as was clarified by the Central Board of Excise and Customs in their instructions issued on 25 February, 1981. According to the Ministry of Law, it cannot be laid as absolute rule that whatever is fixed to the ground automatically becomes immovable property and in order to determine what is and what is not immovable property certain tests have been specified in the relevant Law. The Ministry of Law therefore, have advised the Ministry of Finance that they may decide each case on its merits. Apparently, in the light of the opinion given by the Ministry of Law, the cases pointed out by Audit needed to be reviewed for determining their chargeability to duty. The Committee however, regret to point out that the Ministry of Finance have made no indication in the Action Taken Note of the chargeability/realisation of duty from those cases. The Ministry have simply stated that "the opinion received from the Law Ministry has

been circulated to the field formation with the Board's letter of 14-10-1982." The Committee therefore, reiterate their earlier recommendation that the Ministry of Finance should review those cases and also inform the Committee of the position of chargeability realisation of duty in those cases in the light of the opinion given by the Ministry of Law.

1.10 The Committee hope that in future while issuing instructions, the Central Board of Excise and Customs would take adequate care to interpret matters correctly and according to law in order to protect revenue as also to avoid unnecessary confusion and difficulties in the compliance of instructions by the field formations. The Committee also desire that in case of any doubt or ambiguity, the opinion of the Ministry of Law should invariably be taken

CHAPTER II

RECOMMENDATIONS AND OBSERVATIONS THAT HAVE BEEN ACCEPTED BY GOVERNMENT

Recommendation

Tariff item 68, was introduced in the Central Excise Tariff with effect from 1 March, 1975 to cover 'all other goods not elsewhere specified' Section 4 of the Centre Excises and Salt Act, 1944 read with Notification No. 120/75 dated 30th April, 1975 provides for two alternate methods of valuation of goods falling under tariff item 68 for the purpose of levying excise duty. Accordingly, the value can be determined either in terms of the provisions contained in Section 4 of the Central Excises and Salt Act, 1944 or the invoice prices can be accepted as assessable value where the manufacturer opts for assessment on the basis of invoice prices in terms of notification dated 30th April, 1975, the invoice prices will be accepted as assessable value subject to the assessees' satisfying certain conditions.

[S. No. 1 (Para 1.55) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

The above para refers to two alternative methods of valuation of goods falling under tariff item 68 for the purpose of levy of excise duty. No further action is required.

[Ministry of Finance (Department of Revenue) letter No. 234/24/82-CX7 dated 12 March 1983]

Recommendation

According to the instructions issued by the Central Board of Excise and Customs in September, 1977 when goods are 'cleared in knocked down condition to be assembled at site and over a period of time against a particular contract, the clearances are assessable to duty provisionally and the value of the article in completely assembled condition should be taken for assessment purposes.

[S. No. 2 (Para 1.56) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

This para only refers to the instructions of the Board issued in September, 1977 and by itself, does not cell for any action.

[Ministry of Finance (Department of Revenue) letter No. 234/24/82-CX7 dated 12 March 1983]

Recommendation

The Committee find that where a manufacturer opts for assessment of goods falling under tariff item 68 on the basis of invoice prices in terms of notification No. 120/75-CE dated 30 April, 1975 the invoice price will be accepted as assessable value under Section 4 of the Central Excises and Salt Act, 1944 provided the manufacturer satisfies certain conditions. One of such conditions to avail of the concessional duty under this notification is that the manufacturer should file a certificate to the effect that price referred to in the invoice represents the price actually charged by him for the relevant sale and that price is the sole consideration for the sale. In cases of clearances of machinery in parts in knocked down condition to be manufactured/assembled at site the contract is for the supply of complete machinery. During examination the Ministry of Finance stated that they would accept the invoice price as the sale price for the assessment of duty even in cases where the contract is for the whole project and, therefore, no contract prices for the parts exist. It was, also stated by the Ministry that the clearance of parts of the machinery in such cases also represented sale in commercial parlance. In reply to a question of the Committee the Ministry of Finance further stated that they would accept the certificate of the manufacturer in such cases to the effect that the price in the invoice represents the price actually charged and that price is the sole consideration for the sale. According to the Ministry, "What is important is the independent character of the sale price and the components of sale price are normal".

Further, another condition to be fulfilled by the manufacturer to avail of the concession under notification No. 120/75 dated 30 April, 1975 is that the invoice price is not influenced by any commercial, financial or other relationship whether by contract or otherwise between the manufacturer or any person associated in business with the buyer other than the relationship created by sale of the goods covered by the contract. During examination the Committee asked whether the invoice price for the parts of the machinery would not be treated as influenced by special relationship by contract between the manufacturer and the buyer when

the contract was for the supply of the whole machinery. In their note the Ministry of Finance have *inter alia* stated that "it cannot be said that there is deviation either in procedure or the principle adopted in such cases".

[S. Nos. 9 and 10 (Paras 1.63 and 1.64) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

Paragraphs 1.63 and 1.64 state the legal position in term of notification No. 120/75—CE dated 30-4-1975 (which, subject to the conditions stipulated therein, provides for assessment of goods classifiable under Tariff item 68 on the basis of the invoice value), recapitulate the question raised about these assessments and the answers given. These paragraphs *per se*, do not call for any action.

[Ministry of Finance (Department of Revenue) letter No. 234/24/82-CX7 dated 12 March, 1983]

Recommendation

The Committee are of the view that in the absence of any contract price for the parts and the contract being for the whole project, it cannot be ensured that the parts are not undervalued. In view of this, it would not be correct for the Department to accept the certificate of the manufacturer to the effect that the price in the invoice represents the price actually charged and that the price is the sole consideration for the sale. Moreover, since the contract price is for the whole project it may also not be correct to treat the sale of the parts as sale in commercial parlance. The Committee also feel that such contracts may tantamount to creating a special relationship between the manufacturer and the buyer. Keeping this in view, the Committee consider it imperative that suitable measures have to be taken in order to ensure that parts are not under-valued in cases of clearance of machinery in knocked down conditions to be manufactured/assembled at site and where the contract is for the supply of whole machinery. The Committee would therefore, recommend that the Ministry of Finance should examine the desirability of applying Notification No. 120/75 dated 30-4-1975 in such cases.

[S. No. 11 (Para 1.65) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

For the reasons mentioned therein and against the background of what is discussed in the preceding two paragraphs of the report, paragraph 1.65 makes the observation that the Ministry of Finance should examine the desirability of applying notification No. 120/75—CE in such cases as are referred to therein.

2.1 The matter has been examined.

2.2 Notification No. 120/75—CE is a general notification of exemption issued in exercise of Government's powers under Rule 8(1) of the Central Excise Rules, 1944. It seeks to exempt, subject to the conditions stipulated therein, the goods classifiable under item 68 which are cleared from the factory of manufacture on sale from so much duty of excise leviable thereon as is in excess of the duty calculated on the basis of the invoice price charged by the manufacturer for the sale of such goods.

2.3 This notification would not automatically apply to all cases of clearance of T.I. 68 goods unless the conditions prescribed therein are in terms, satisfied in each case. While it has to be borne in mind that in the case of custom-made goods, which are specifically designed or manufactured pursuant to a specific order, any alternative guide, apart from the invoice value is not easy to find for purposes for determining the assessable value of such custom-made goods, the observations made by the Committee are very pertinent and valid. These have been noted.

2.4 In cases where, having regard, *inter alia,* to the factors mentioned by the Committee in its observations, it is found that the invoice price does not represent the correct value of the goods for purposes of determining their assessable value or that any other of conditions prescribed in the related notification are not satisfied, the assessment of such goods cannot be made in terms of the notification No. 120/75—CE. The observations of the Committee have accordingly been circulated to the field formations so that these alongwith other relevant considerations can be kept in view while making a judgement whether in a particular case, the goods should, or should not, be assessed in terms of notification No. 120/75—CE.

[Ministry of Finance (Department of Revenue) letter No. 234/24/82-CX7 dated 12 March, 1983]

CHAPTER III

RECOMMENDATIONS AND OBSERVATIONS WHICH THE COMMITTEE DO NOT DESIRE TO PURSUE IN THE LIGHT OF THE REPLIES RECEIVED FROM GOVERNMMENT

CHAPTER IV

RECOMMENDATIONS AND OBSERVATIONS REPLIES TO WHICH HAVE NOT BEEN ACCEPTED BY THE COMMITTEE AND REQUIRE REITERATION

.. Recommendations

In the Audit paragraph under examination it has been pointed out that five units in two collectorates (3 units in Baroda and 2 units in Calcutta Collectorates) manufacturing various items of machines falling under tariff item 68, entered into contracts for manufacture and supply of such machines. The machines were cleared in knocked down condition over a period of time from the factories on payment of duty on the basis of invoice value under notification dated 30 April, 1975 at the rates prevalent at the time of clearances of the parts of such machines. This was not regular as goods assessable to duty are the completed articles and the duty at the rates prevalent on the date of completion of the contract/ supply of goods is, therefore, to be levied on the total value of the machines including assembling charges. According to the Audit, the incorrect assessment led to a short levy of duty of Rs. 24.77 lakhs calculated at the rates prevalent during February, 1977 to May 1979 when the contracts were finalised.

The Committee find that while communicating their comments to the draft Audit paragraph, the Ministry of Finance accepted the audit objection in three cases in the Baroda Collectorate. The Ministry had also informed that in two cases the show cause-*cum*-demand notices were under process of adjudication and in one case the demand was confirmed but the amount was pending realisation. Out of the remaining two cases (reported from Calcutta Collectorate) one was stated to have become *sub-judice* and in the other one demand raised was under the process of adjudication. Later, the Ministry of Finance have, however, informed the Committee that the audit objection was further examined in the light of the fresh instructions issued by the Central Board of Excise Customs on 25 February, 1981 and the Ministry have now maintained that no irregularity as such had taken place.

The Committee find that the Central Board of Exercise and Customs issued fresh guidelines on 25th February, 1981 on classification of plant and machinery assembled at site under tariff item 68 after

the matter was discussed at Zonal Tariff Conferences held in September, October, and December, 1980. In the said instructions, the Board held the view that each of the individual items of goods which are cleared for use in the assembly should pay duty at the time of their clearance from the factory of their production, unless specifically exmept. Further liability of duty on the completed articles produced by/assembling these parts alongwith bought out items if any, will arise only when such assembly involves "manufacture" and the site at which assembly takes place is a 'factory' premises. In the case of plant and machinery, it is first to be examined if these plants and machinery are 'goods' manufactured in a 'factory', that is, they are bought and sold after 'manufactured' in that factory and in case the plants and machinery assembled and installed at site as a total entity is not capable of being sold as goods, no further duty is payable. According to the Ministry in the cases involved in the Audit paragraph goods were cleared in parts at the rates prevalent on the date of the actual removal and, therefore, no irregularity had taken place.

The Committee were informed that the instructions issued by the Central Board of Excise and Customs on 25 February, 1981, did not supersede the earlier instructions issued in September, 1977. According to the Ministry of Finance, "the instructions issued in 1977 are of general nature and do not cover any specific cases". From the information furnished to the Committee it is, however, seen that the instructions issued in September, 1977, in fact, were in response to certain specific references made by the Collector of Central Excise, Hyderabad. As such, if the genuine intention of the issue of instructions in February, 1981 was to cover specific cases, as is now being contended by the Ministry, it would have been fairly reasonable to expect from the Central Board of Excise and Customs to lay down adequate guidelines in 1977 itself immediately after the specific references were received from the Collector of Central Excise, Hyderabad. The inordinate time gap of more than 3-1|2 years on the part of the Board to lay down proper guidelines had apparently resulted in a lot of confusion in classifying plant and machinery assembled at site under tariff item 68. What is all the more intriguing is that even the resultant position after the issue of instructions in February, 1981 does not appear to be free from confusion so much so that in no less than a period of three months, the Board had again to issue further clarifications (i.e. on 13 May, 1981) on the matter. Some of the implications of the instructions issued in February, 1981 are dealt with in the succeeding paragraphs.

The Committee note that in the instructions issued on 25 February, 1981, the Central Board of Excise & Customs had referred to the definition of 'goods' given in the Sale of Goods Act, 1930 for the the purpose of making assessments of plant and machinery manufactured|assembled at site. The term 'goods' has not been defined in the Central Excise and Salt Act, 1944 and only the term 'excisable goods" has been defined in Section 2 (d) of the Act. It is pertinent to point out that the Central Excise and Salt Act, 1944 does not stipulate sale of goods for the purpose of levy of duty, the duty being levied on manufacture and not on their sale. According to the Ministry of Finance, "in the absence of a definition in the parent Act it was considered prudent to rely on another enactment of the Parliament to take help or assistance in streamlining the procedure". In the cases mentioned in the Audit para, the Ministry of Finance, in their latest replies, have gone only by the fact that the 'machines supplied were affixed to the ground'. This fact, by itself is not enough to take the machines out of the definition of movables. The Transfer of property Act defines the phrase 'attached to the earth' to mean, rooted in the earth as in the case of trees or shrubs, embedded in the earth as in the case of walls or buildings, or attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached. In order to determine what is or what is not immovable as a result of attachment or annexation to land two tests have been laid down viz (i) the degree or mode of annexation and (ii) the object of annexation. (Commissioner of Income Tax Vs. Bhurangiya Coal Co.—AIR 1953 pat, 298) what has to be seen is whether the annexation is with the object of permanent benefical enjoyment of the land or building, machinery attached by bolts to special concrete base so that it could not be easily moved was held not to be part of the structure housing it, or the soil beneath it, as the machinery was not attached for the permanent beneficial enjoyment of either the soil or the concrete, Jnan Chand Vs. Jugal Kishore-1960, Ac. 331-See Mulla on. Transfer of property 6th ed P. 27) Regard must also be had to the tital of the person fixing it and the object of the transaction by which it is transferred or fixed (Subramanian Firm Vs. Chidhambram—AIR 1940. Mad. 527). The cases have, therefore, to be examined from all these angles. In reply to a pointed question of the Committee, the Ministry, however, admitted that "the opinion of the Law Ministry was not obtained before the issue of the instructions dated 25-2-1981." The Committee recommend that the Ministry of Finance should now seek the opinion of the Ministry of Law on the issue and review

these cases accordingly under intimation to the Committee.

[S. Nos. 3 to 7 (Paras 1.57 to 1.61) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

The above mentioned five paragraph recaptulate the facts of the cases covered by Audit Para 2.51, the questions raised and the answers given with regard to those cases and containing at the end, the recommendations that the opinion of the Law Ministry should be taken on the issue involved.

2. This has been done. The opinion received from the Law Ministry has been circulated to the field formations with Board's letter of 14-10-82 copy of which is enclosed.

[Ministry of Finance (Department of Revenue) letter No. 234/24/82-CX7 dated 12 March, 1983]

F. No. 13/10/81-CX-1

Central Board of Excise & Customs

New Delhi, the 14th October, 1982.

To

All Collectors of Central Excise.

SUBJECT:—*Classification of plant and Machinery assembled at site.*

Sir,

I am directed to refer to Board's letter of even number dated 25-2-1981 on the subject and to enclose a copy of the opinion given by the Law Ministry on the definition of goods in relation to plant and machinery assembled at site.

2. It is requested that each case may be decided on merits, keeping in view the opinion given by the Law Ministry.

3. Receipt of this letter with enclosure may please be acknowledged.

Yours faithfully,

Sd|- (R. Deb)

Under Secretary.

Copy of the Advice of the Ministry of Law

It is seen that the public Accounts Committee has asked the Ministry of Finance to seek the opinion of the Ministry of Law on the issue mentioned in letter of the Department dated 25-2-1981 and review the cases accordingly. The issue raised in the said letter is whether the plant and machinery assembled at site would attract item 68.

2. After quoting the definition of goods as per the Sale of Goods Act, the Department has stated as under:

> "In the case of plant and machinery assembled and installed at site, they are firmly affixed to the ground and normally are not intended to be moved. Further, they are not intended for sale even though there may be cases of transfer of ownership or even dismantling and sale. Accordingly, they may not merit to be called 'goods' ".

3. With respect, we are unable to agree with this view. As pointed out by PAC, the more fact that machines supplied were affixed to the ground cannot take such machines out of the definition of movables or goods and make them immovables. In this connection, it will be pertinent to distinguish immovable property from movable property. Since immovable property has not been defined in the Central Excise Act, it will be useful to note its definition given in the General clauses Act. Section 3(26) of the General Clauses Act states that immovable property shall include land and benefits to arise out of land, and things attached to earth or permanently fastened to anything attached to the earth. As per section 3 of the Transfer of property Act, 'attached to earth' means: (a) rooted in the earth as to the cases of trees and shrubs; (b) embedded in the earth, as in the case of walls and building and (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

4. Therefore, it cannot be laid as absolute rule that whatever is affixed to the ground automatically becomes immovable property. In order to determine what is and what is not immovable property as a result of attachment or annexation to land, two tests have been laid.

(1) The degree or mode of attachment. (2) The object of such attachment. What is to be seen is whether the said attachment is with the object of permanent beneficial enjoyment of the land or

building. In deciding whether the plant or machinery affixed to the earth is immovable property, regard must be had not merely to the nature of attachment by which the plant or machinery is fixed to the ground but also to the circumstances in which it became to be fixed, the tital of the person fixing it and the object of the transaction by which the plant or machinery is transferred or bound.

5. In the light of what is stated above, the Department may decide each case on its merits.

CHAPTER V

RECOMMENDATIONS AND OBSERVATIONS IN RESPECT OF WHICH GOVERNMENT HAVE FURNISHED INTERIM REPLIES.

Recommendation

The Committee note that one of requirements for determining duty liability under tariff item 68 is that the goods should be manufactured in a factory. Under the explanation given below tariff item 68, "factory" has the meaning assigned to it in Section 2(m) of the Factories Act, 1948. Under Section 2(m) of the said Act, Factory means any premises employing ten or more workers with the aid of power or twenty or more workers without the aid of power. According to the instructions issued by the Central Board of Excise and Customs on 25 February, 1981 assessment of the machinery assembled or erected at site under tariff item 68 would depend on whether assembly erection would amount to manufacture bringing into existance of a new commodity with distinctive name, character and use and also whether the site can be treated as "factory' in terms of Section 2(m) of the Factories Act, 1948 To a question of the Committee as to why the assembly erection at site cannot be treated as factory in cases where ten or more workers might be employed for completing these projects with the aid of power or twenty or more workers without the aid of power, the Ministry of Finance have merely stated that 'it is a matter of fact and has to be determined in each case whether such "places" are "factories" within the meaning of Section 2(m) of the Factories Act. Moreover whether excisable goods are manufactured in such places, is again a matter of fact. No general comments can be given. The Committee are not satisfied with the Ministry's reply as this has still not made the position clear. The Committee would like the Ministry of Finance to examine whether the specific cases pointed out in the Audit paragraph were covered by the definition of "factory" and if so, why these cases could not be made liable for further duty.

[S. No. 8 (Para 1.62) of Appendix VII to 108th Report of the Public Accounts Committee (Seventh Lok Sabha)]

Action Taken

This para seeks information as to position of the cases covered by Audit Para 2.51 having regard clarification furnished by the Ministry to the Committee.

2. The available information with respect to these is as follows:—

(a) *Baroda*

(i) Regarding National Machinery manufacturers Pvt. Ltd. The adjudicating authority has decided the case confirming the demand raised. The party has preferred an appeal to the Collector (Appeal) and also has obtained order from the High Court of Gujarat staying recovery.

(ii) Regarding Bharat Textile Works. The adjudicating authority has decided the case confirming the demand. The party has preferred an appeal to the Collector (Appeal).

(iii) Regarding Sayaji Iron and Engineering Pvt. Ltd. The concerned Assistant Collector has been directed by the Collector to decide the case on its merits in exercise of his quasi-judicial jurisdiction.

(b) *Calcutta*

Regarding General Electric Company. (i) The High Court remitted the case to the adjudicating authority for taking a decision before 10-3-83. The case has since been decided.

(ii) The information relating to M/s. Jessop and company is being ascertained from the concerned Collector and will be furnished to the Committee immediately on receipt.

[Ministry of Finance (Department of Revenue) letter No. 234|24|82-cx-7 dated 12 March 1983]

NEW DELHI;
23 *July*, 1983
1 *Sravana*, 1905 (*S*)

SUNIL MAITRA,
Chairman,
Public Accounts Committee.

APPENDIX

Conclusions/Recommendations

S. No.	Para No.	Ministry/Department concerned	Recommendation/Conclusion
1	2	3	4
1	1.3	Ministry of Finance (Deptt. of Revenue)	The Committee desire that final action taken reply to the recommendation at S. No. 8 in respect of which only interim reply has been furnished so far should be submitted expeditiously after getting it vetted by Audit.
2	1.8 & 1.9	D.o	In their 108th Report, the Committee had examined certain cases of short levy of excise duty amounting to s. 24.77 lakhs under item 68 of the Central Excise Tariff and in terms of the instructions issued by the Central Board of Excise and Customs in September, 1977 on goods cleared in knocked down condition to be manufactured assembled at site and over a period of time against a particular contract. The Ministry of Finance had maintained that no irregularity had taken place in those cases in the light of the fresh instructions issued by the Central Board of Excise and Customs on 25 February, 1981. While pointing out certain anomalies in the instructions issued on 25 Februory, 1981, the Committee had observed that the Board had not examined the matter from all legal angles. For example, in the said instructions, the Board had *inter alia* maintained that in case plant and machinery assembled and installed

at site as a total entity was not capable of being sold as goods, no further duty was payable. The Board had further drawn the conclusion that in the type of cases under review, plant and machinery may not merit to be called goods as they are not movable in terms of the definition of 'goods' under the Sale of Goods Act 1930. While observing that this interpretation of the Board was without the support of any legal opinion given by the Ministry of Law, the Committee had recommended that the Ministry of Finance should now seek the opinion of Ministry of Law and review the cases of irregularities pointed out by the Audit.

In pursuance of the recommendation of the Committee, the Ministry of Finance sought the opinion of the Ministry of Law. From the opinion given by the Ministry of Law it is seen that they have disagreed with the Ministry of Finance on the interpretation of plant and machinery as 'not movable' in terms of the definition of 'goods' under the Sale of Goods Act, as was clarified by the Central Board of Excise and Customs in their instructions issued on 25 February, 1981. According to the Ministry of Law, it cannot be laid as absolute rule that whatever is fixed to the ground automatically becomes immovable property and in order to determine what is and what is not immovable property certain tests have been specified in the relevant Law. The Ministry of Law therefore, have advised the Ministry of Finance that they may decide each case on its merits. Apparently, in the light of the opinion given by the Ministry of Law, the cases pointed out by Audit needed to be reviewed for determin-

1	2	3	4
			ing their chargeability to duty. The Committee however, regret to point out that the Ministry of Finance have made no indication in the Action Taken Note of the chargeability/realisation of duty from those cases. The Ministry have simply stated that "the opinion received from the Law Ministry has been circulated to the field formation with the Board's letter of 14-10-1982." The Committee therefore reiterate their earlier recommendation that the Ministry of Finance should review those cases and also inform the Committee of the position of chargeability/realisation of duty in those cases in the light of the opinion given by the Ministry of Law.
3	1.10	Ministry of Finance (Department of Revenue)	The Committe hope that in future while issuing instructions, the Central Board of Excise and Customs would take adequate care to interpret matters correctly and according to law in order to protect revenue as also to avoid unnecessary confusion and difficulties in the compliance of instructions by the field formations. The Committee also desire that in case of any doubt or ambiguity, the opinion of the Ministry of Law should invariably be taken.